

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LIBORIO HERNANDEZ, INDIVIDUALLY	§
AND AS GUARDIAN OF JAHIR	§
HERNANDEZ & LIBORIO HERNANDEZ	§
MINOR CHILDREN	§

Plaintiff,

v.

STATE INDUSTRIES, LLC, et al.

Defendants.

Civil Action No. 5:21-cv-01036

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, State Industries, LLC¹ (“State Industries”) removes the above-styled action from the 244th Judicial District Court of Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division. Diversity jurisdiction exists in this action pursuant to 28 U.S.C. § 1332(a) because the amount-in-controversy requirement is satisfied and because State Industries, LLC, LG Electronics, Inc. (“LGE”), and LG Electronics U.S.A., Inc. (“LGE USA”) (hereinafter referred to collectively as “Defendants”) are diverse from Plaintiff Liborio Hernandez, individually and as the guardian of minors Jahir Hernandez and Liborio Hernandez. In further support of this removal, State Industries states as follows:

1 Plaintiff's Petition erroneously adds State Industries Inc. as a party to this action. State Industries, Inc. was converted to State Industries, LLC effective January 1, 2017. *See Acknowledgement of Conversion, attached as Exhibit A.* Accordingly, State Industries, Inc. no longer exists and cannot be a party in this action.

I. FACTUAL BACKGROUND

1. On April 29, 2021, Plaintiff Liborio Hernandez commenced this action in his individual capacity and on behalf of his minor children in the 244th Judicial District Court for Bexar County, Texas, which is within the district to which this case is removed.

2. Plaintiff's Original Petition (the "Petition") alleges that, on May 1, 2021 [sic], his minor children suffered injuries as a result of a garage fire. Plaintiff's Pet. at ¶ 10. Specifically, Plaintiff alleges that while transferring gasoline from a parked vehicle to a portable gas tank, the minor children "turned on the flashlight on the LG phone" in order to illuminate their path. *Id.* According to the Petition, this series of events caused a fire, which led to burns for both children. *Id.* at ¶¶ 10–11.

3. Plaintiff's Petition named State Industries, Inc., State Industries, LLC, LGE, and LGE USA as Defendants. Notably absent from Plaintiff's Petition are any factual allegations identifying the Defendants' specific involvement in this case.

4. Plaintiff brings claims for negligence, products liability, breach of warranty, and vicarious liability against all "Defendants" without identifying specific actionable conduct against any individual defendant. *Id.* at ¶¶ 13–44. Plaintiff seeks "monetary relief over \$1,000,000.00." *Id.* at ¶ 46.

II. GROUNDS FOR REMOVAL

5. This action is removable because it is a civil action "of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). Specifically, this Court has jurisdiction under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between all parties to this case, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

6. This removal is timely because it is filed within 30 days of service on State Industries LLC, which occurred on October 12, 2021.

7. All other prerequisites to removal have been satisfied. As required under 28 U.S.C. § 1446(a), copies of all processes, pleadings, and orders served upon State Industries LLC in the underlying state court action are attached as Exhibit B. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal, along with a Notice of Filing of Notice of Removal, is being filed contemporaneously in the 244th Judicial District Court for Bexar County, Texas.

A. COMPLETE DIVERSITY EXISTS BETWEEN DEFENDANTS AND PLAINTIFF.

8. Plaintiff is a resident citizen of Bexar County, Texas. Plaintiff's Pet. at ¶ 2. Thus, Plaintiff Liborio Hernandez is now and was, at the time this action was commenced, a citizen of the State of Texas.

9. At all times relevant to this lawsuit, the children of Liborio Hernandez—Jahir Hernandez and Liborio Hernandez—have each been residents of Bexar County, Texas. Plaintiff's Pet. at ¶ 2. Thus, Plaintiff Liborio Hernandez, as the minors' representative, is a citizen of the State of Texas. 28 U.S.C. § 1332(c)(2).

10. Defendant State Industries, LLC is a Tennessee limited liability company. Accordingly, for purposes of the Court's diversity jurisdiction, State Industries, LLC's citizenship is that of each of its members. *See MidCap Media Finance, L.L.C. v. Pathway Data, Incorporated*, 929 F.3d 310, 314 (5th Cir. 2019). The only member of State Industries, LLC is the A. O. Smith Corporation. A. O. Smith Corporation is a Delaware corporation with its principal place of business in Wisconsin. Thus, State Industries, LLC is now and was at the time this action was commenced, a citizen of Delaware and Wisconsin and of no other state.

11. LGE is a Korean corporation with its principal place of business in Seoul, Korea. Plaintiff's Pet. at ¶ 5. Thus, LGE is now and was at the time this action was commenced, a citizen of the Republic of Korea.

12. LGE USA is a Delaware corporation with its principal place of business in New Jersey. Thus, LGE USA is now and was at the time this action was commenced, a citizen of Delaware and New Jersey and of no other state.

13. Thus, this action involves "citizens of different states and in which citizens or subjects of a foreign state are additional parties" in accordance with 28 U.S.C. § 1332(a)(3).

B. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.

14. Under 28 U.S.C. § 1446(a), a defendant's notice of removal need only include a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 811 (2014). This allegation can be based on "a pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b).

15. Here, Plaintiff seeks damages in excess of \$1,000,000.00, conceding that the amount in controversy well exceeds \$75,000.00. Plaintiff's Pet. at ¶ 46.

16. Consequently, there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Thus, this Court has subject matter jurisdiction.

17. By filing this Notice, State Industries, LLC does not waive any of its defenses, including but not limited to any defenses under Rule 12 of the Federal Rules of Civil Procedure.

18. All conditions and procedures for removal have been satisfied.

19. At the time of this removal, State Industries, LLC is the only properly joined and served defendant in this action, so no other named defendant need join in or consent to this removal. 28 U.S.C. § 1446(b)(2)(A); *Getty Oil Corp., a Div. of Texaco v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1262 n.9 (5th Cir. 1988) (“Defendants (at least those not citizens of the forum state) who are unserved when the removal petition is filed need not join in it.” (citations omitted)).

III. PRAYER

State Industries, LLC, respectfully removes this action to the United States District Court for the Western District of Texas, San Antonio Division, for trial and determination of all issues.

Respectfully submitted,

By: Kaitlyn M. Faucett

J. Chandler Bailey

State Bar No. 24109208

cbailey@lightfootlaw.com

Kaitlyn M. Faucett

State Bar No. 24081490

kfaucett@lightfootlaw.com

LIGHTFOOT, FRANKLIN & WHITE, LLC

1885 Saint James Place, Suite 1150

Houston, Texas 77056

(713) 960-1488 Telephone


(713) 960-8991 Facsimile

**ATTORNEYS FOR DEFENDANT
STATE INDUSTRIES, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent in compliance with the Federal Rules of Civil Procedure on this the 25th day of October 2021, on all counsel of record.

Stephen R. Walker
Gregory J. Finney
Juan Solis
LAW OFFICES OF MANUEL SOLIS, PC
6657 Navigation Boulevard
Houston, Texas 77011
(713) 277-7838 Telephone
(281) 377-3924 Facsimile


Kaitlyn M. Faucett